

**REMARKS**

Claims 1 and 3-30 remain pending. Claims 1 and 3-30 were rejected under 35 U.S.C. § 103(a) as being unpatentable over U.S. Patent No. 6,099,320 to Papadopoulos (henceforth, "*Papadopoulos*"), in view of U.S. patent application publication No. 2005/0192954 to Gupta et al. (henceforth, "*Gupta*"), U.S. patent application publication No. 2002/0173999 to Griffor et al. (henceforth "*Griffor*"), U.S. patent application publication No. 2002/0064766 to Cozens et al. (henceforth, "*Cozens*"), and U.S. patent application publication No. 2002/0064766 to Nourbakhsh et al. (henceforth, "*Nourbakhsh*"). Applicant respectfully traverses these rejections.

"The key to supporting any rejection under 35 U.S.C. § 103 is the clear articulation of the reason(s) why the claimed invention would have been obvious. . . . [R]ejections on obviousness cannot be sustained with mere conclusory statements. M.P.E.P. § 2142, 8th Ed., Rev. 7 (July 2008)(internal citation and inner quotation omitted). "[T]he framework for the objective analysis for determining obviousness under 35 U.S.C. 103 is stated in *Graham v. John Deere Co.*, 383 U.S. 1, 148 USPQ 459 (1966). . . . The factual inquiries . . . [include determining the scope and content of the prior art and] . . . [a]scertaining the differences between the claimed invention and the prior art." M.P.E.P. § 2141(II). In rejecting a claim, "Office personnel must explain why the difference(s) between the prior art and the claimed invention would have been obvious to one of ordinary skill in the art." M.P.E.P. § 2141(III). As set forth below, the references cited by the Office Action either teach away from the Office's

proposed combination or provide no teaching of the claim elements at all. Thus, the Office has not clearly articulated why the claimed invention would have been obvious, and a *prima facie* case of obviousness has not been established for any of the rejected claims.

Claims 1 and 15 call for a combination including, for example, a “content development platform . . . adapted to record performance metrics during authoring of instructional materials and generation of electronic learning content by course authors.” All of the cited references fail to teach or suggest at least this claim element.

The Office relies on *Gupta* for “teaching recording performance metrics.” (Office Action at ¶ 31). Applicant admits that *Gupta* does describe recording performance metrics. However, as detailed in Applicant’s previous response, the performance metrics of *Gupta* are recorded entirely during delivery of content. *Gupta* states, while discussing “delivering adaptive content,” that “[v]arious performance metrics are recorded during user interaction.” (*Gupta* ¶ 18) (emphasis added). As a result, the Office itself notes that “*Gupta* teaches a delivery system capable of recording performance metrics.” (Office Action ¶ 6) (emphasis added). Thus, *Gupta* does not teach “a content development platform . . . adapted to record performance metrics during authoring of instructional materials and generation of electronic learning content by course authors,” (emphasis added) as recited in claims 1 and 15.

The Office also alleges that *Papadopoulos* teaches “budget and accounting processes” and that “recording performance measurements during

the authoring of content would have been obvious” because “the course offered (i.e. the authored contents) and the materials required for the courses” are part of these processes. (Office Action ¶¶ 11, 31). As an initial matter, even assuming the Office’s characterization of *Papadopoulos* is correct, which Applicant does not concede, *Papadopoulos* fails to cure the deficiencies of *Gupta* discussed above. The Office’s recitation of “course offered (i.e. the already authored contents) and the materials required for the courses” as part of a budgeting process cannot constitute “record[ing] performance metrics during authoring of instructional materials,” (emphasis added) as required by the claims. It is clear that any budgeting based on these would relate to already authored (i.e. authored in the past) courses.

Furthermore, examination of the portion of *Papadopoulos* that the Office characterizes as teaching “budget and accounting processes” shows that *Papadopoulos* teaches away from claims 1 and 15. *Papadopoulos* makes clear that these “processes” relate solely to activity during delivery of content, stating that “[s]tatistical information and graphs on the number of courses available over time, the average amount of time required to complete a course, the actual number of *students* taking and completing courses and other useful statistics are generated automatically from the student records.” (*Papadopoulos* Col. 7, lines 60-65) (emphases added). Thus, in disclosing recording after authoring, both *Gupta* and *Papadopoulos* teach away from claims 1 and 15, which recite “a content development platform . . . adapted to record performance metrics during authoring of instructional materials and generation of electronic learning content

by course authors.” As a result, one of ordinary skill in the art would not be motivated by the teachings of *Gupta* or *Papadopoulos*, taken alone or in combination, to achieve the combinations of claims 1 or 15. Since claims 3-14 depend from claim 1 and claims 16-30 depend from claim 15, neither these claims nor claims 1 or 15 are unpatentable over *Papadopoulos* in view of *Gupta*.

The Office also asserts that claims 10, 17, and 26 are unpatentable over *Papadopoulos* in view of *Gupta*. These claims recite that a learning solution “is outsourced from a learner organization to said learning services providing entity according to a learning services agreement, said agreement detailing minimum service levels.” *Papadopoulos*, which is relied on by the Office for this claim element, makes absolutely no mention of “outsourcing” whatsoever. The Office’s discussion of this claim element contains nothing more than conclusory statements, attempting to analogize the claims to the references without analysis or support. Thus without any teaching, motivation, or even mere mention of the above-quoted claim element, one of ordinary skill would not be motivated by *Papadopoulos* to achieve the combinations of claims 10, 17, or 26. Since claims 11-14 depend from claim 10 and claims 27-30 depend from claim 26, neither these claims nor claims 10, 17, or 26 are unpatentable over *Papadopoulos* in view of *Gupta*.

In view of the mischaracterizations of the prior art set forth above, the Office has neither properly determined the scope and content of the prior art nor ascertained the differences between the claimed invention and the prior art. Moreover, the Office has provided no motivation for one of ordinary skill in the art

to modify the teachings of the prior art to achieve the claimed combinations.

Accordingly, no reason has been articulated as to why one of skill in the art would find the claimed combination obvious in view of the prior art. For at least this reason, no *prima facie* case of obviousness has been established. The rejection of independent claims 1 and 15 and dependent claims 3-14 and 16-30, under 35 U.S.C. § 103 as being obvious from *Papadopoulos* in view of *Gupta* is thus improper and should be withdrawn.

All claims are thus allowable for the failure of the art to disclose, teach, suggest, or otherwise render obvious the recited combination of elements. Applicant requests favorable reconsideration of the claims and issuance of a timely Notice of Allowance.


**CONCLUSION**

No additional fees are believed to be due at this time. If, however, there are any fees due in connection with the filing of this Response, please charge any necessary fees to Deposit Account No. 06-0916.

Respectfully submitted,

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